IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

WP(C).No. 37510 of 2003(M)

PETITIONER:

M/S. CHARANGATTU COIR MANUFACTURING
CO.(P) LTD, KANICHAKULANGARA, P.B.NO.7,
CHERTHALA.P.O, REP. BY ITS MANAGING DIRECTOR.

BY ADV. SRI.B.S.KRISHNAN (SR.)
SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

RESPONDENTS:

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1. THE PRESIDENT, THE INDUSTRIAL EMPLOYEES
SANGAM (BMS), BMS OFFICE, CHERTHALA.P.O.

2. THE PRESIDING OFFICER,
LABOUR COURT, KOLLAM.

R1 BY ADV. SRI.N.NAGARESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE REFERENCE ORDER GO(Rt) No.1265/98/LBR DATED 13.5.1998 ISSUED BY THE GOVERNMENT.

EXT.P2: COPY OF THE COMPLAINT MADE TO THE DISTRICT LABOUR OFFICER, ALAPPUZHA BY THE 1ST RESPONDENT UNION DATED 14.11.1995.

EXT.P3: COPY OF THE SUMMONS DATED 19.6.98 RECEIVED FROM THE 2ND RESPONDENT BY THE PETITIONER.

EXT.P4: COPY OF THE CLAIM STATEMENT FILED BY THE 1ST RESPONDENT UNION IN THE ABOVE DISPUTE ON 25.11.1999 IS PRODUCED AND MARKED AS.

EXT.P5: COPY OF COUNTER STATEMENT FILED BY THE MANAGEMENT BEFORE THE 2ND RESPONDENT.

EXT.P6(a):COPY OF THE MEDICAL CERTIFICATE ISSUED BY THE ESI CORPORATION-No.546912 DATED 11.9.95.

EXT.P6(b):COPY OF THE MEDICAL CERTIFICATE ISSUED BY ESI CORPORATION-No.546932 DATED 18.9.95.

EXT.P6(c): COPY OF THE MEDICAL CERTIFICATE ISSUED BY ESI CORPORATION-No.3312 DATED NIL.

EXT.P6(d):COPY OF THE CERTIFICATE ISSUED BY SREE NARAYANA MEDICAL MISSION, CHERTHALA-No.47/SNM/CER/330 DATED 19.8.1995.

EXT.P7: COPY OF ATTENDANCE REGISTER OF STAFF OF THE PETITIONER COMPANY, FOR THE MONTH OF AUGUST 1995.

EXT.P8: COPY OF THE AWARD DATED 25.5.2003 IN ID No.39/1998 ISSUED BY THE 2ND RESPONDENT.

TRUE COPY

P.A.TO JUDGE

S.SIRI JAGAN,J

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W.P.(C).No.37510 OF 2003

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Dated this the 20th day of March, 2007

JUDGMENT

The management in I.D.No.39 of 1998 before the Labour Court, Kollam, is the petitioner in this writ petition. The petitioner is challenging Ext.P8 award passed by the Labour Court in that I.D. The issue referred for adjudication was as follows:

> "Whether the alleged denial of employment of Smt. M.Ajitha, Typist from 13.11.1995 is justifiable? If not, what benefit she is entitled to."

The Labour Court found that the workman in question namely, Smt.M.Ajitha, Typist, was employed by petitioner-management and that she was on maternity leave from 14.8.1995 and when she returned after the maternity leave she was denied employment by the management . The case of management is that the workman did not submitted any leave application or medical certificates from the E.S.I Corporation and the worker herself left the service without any notice and there was no denial of employment. The Labour Court found that the petitioner management in fact, denied employment to the said workman and therefore, directed reinstatement of the workman in service with full backwages, and attendant benefits from 30.11.1995 with continuity of service. This award is under challenge in this writ

petition.

2. I have heard the learned counsel for the petitioner as also learned counsel appearing for the first respondent Union.

3. There is no dispute regarding the fact that Smt. M.Ajitha the workman concerned in the dispute was in the employment of the petitioner management from 1.07.1991 onwards. According to the workman, from 10.8.1995 to 13.8.1995 she availed casual leave and from 14.08.1995 onwards she was on maternity leave and she gave birth to a child on 14.08.1995. The Labour Court after considering the rival contentions of the parties found that the contention of the management that the workman had not produced records to show that she had not applied for maternity leave is not correct. The Labour Court accepted the evidence of the workman that she had forwarded Ext.W1 series documents from the E.S.I Corporation and she had also produced postal receipt regarding sending of those records to the management, which is Ext.W2. The Labour Court as a matter of fact found that in so far as, the management does not deny the fact that the workman had in fact delivered a child on 14.08.1995 and the fact that she had in possession of certificates from the hospital where she gave birth to her child and certificates from the E.S.I Corporation regarding her maternity, would sufficiently prove the case of the workman that she was actually on maternity leave. The Labour Court further found that, even assuming that the workman

had not forwarded the documents to the management, at the most what the management could have done was to deny her wages for the period and not to deny her employment when she reported for duty after the leave. I find that the petitioner management has no case that they have taken any disciplinary proceedings against the workman for unauthorised absence. They have also not chosen to produce any documents to show that they have in fact issued any notice directing the workman to report for duty. If they had a case that she was unauthorisedly absent, that was the minimum procedure they should have adopted before assuming that the workman had voluntarily abandoned employment. Without the same, the management cannot simply justify their stand stating that since the workman did not apply for leave, she had abandoned her employment.

4. In any event, in so far as the attempt of the petitioner in the original petition is to attack the award on the ground that findings of the Labour Court are not correct, I am not inclined to interfere with Ext.P8 award since my jurisdiction under Article 226 against an award of the Labour Court extends only to see whether the findings are perverse. Reading of Ext. P8 would go to show that the Labour Court had assessed the evidence before it properly and has come to the conclusion based on that evidence,which cannot by any stretch of imagination be said to be perverse without which finding, under law, I cannot interfere with Ext.P8 award.

Even assuming that on the same evidence another person would have come to a different conclusion is no justification to interfere with an award in an I.D, which law is so settled by decision of the Supreme Court as to obviate the necessity to cite any specific case law. In the above circumstances, I do not find any merit in the challenge against Ext.P8 . Accordingly this wirt petition is dismissed.

S.SIRI JAGAN,JUDGE

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